

**§ 105-130.7B. (Effective for taxable years beginning on or after January 1, 2016)**

**Limitation on qualified interest for certain indebtedness.**

(a) **Limitation.** – In determining State net income, a deduction is allowed only for qualified interest expense paid or accrued by the taxpayer to a related member during a taxable year. This section does not limit the Secretary's authority to adjust a taxpayer's net income as it relates to payments to or charges by a parent, subsidiary, or affiliated corporation in excess of fair compensation in an intercompany transaction under G.S. 105-130.5(a)(9).

(b) **Definitions.** – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

- (1) **(Repealed effective for taxable years beginning on or after January 1, 2017)** Adjusted taxable income. – State net income of the taxpayer determined without regard to this section and other adjustments as the Secretary may by rule provide.
- (2) **Bank.** – One or more of the following, or a subsidiary or affiliate of one or more of the following:
  - a. A bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended.
  - b. One or more of the following entities incorporated or chartered under the laws of this State, another state, or the United States:
    1. A bank. This term has the same meaning as defined in G.S. 53C-1-4.
    2. A savings bank. This term has the same meaning as defined in G.S. 54C-4.
    3. A savings and loan association. This term has the same meaning as defined in G.S. 54B-4.
    4. A trust company. This term has the same meaning as defined in G.S. 53C-1-4.
- (3) **Net interest expense.** – The excess of the interest paid or accrued by the taxpayer to each related member during the taxable year over the amount of interest from each related member includible in the gross income of the taxpayer for the taxable year.
- (3a) **(Effective for taxable years beginning before January 1, 2017)** Proportionate share of interest. – The amount of taxpayer's net interest expense paid or accrued directly to or through a related member to an ultimate payer divided by the total net interest expense of all related members that is paid or accrued directly to or through a related member to the same ultimate payer, multiplied by the interest paid or accrued to a person who is not a related member by the ultimate payer. Any amount that is distributed, paid, or accrued directly or through a related member that is not treated as interest under this Part does not qualify.
- (3a) **(Effective for taxable years beginning on or after January 1, 2017)** Proportionate share of interest. – The amount of taxpayer's net interest expense paid or accrued directly to or through a related member to an ultimate payer divided by the total net interest expense of all related members that is paid or accrued directly to or through a related member to the same ultimate payer, multiplied by the interest paid or accrued to a person who is not a related member by the ultimate payer. Any amount that is distributed, paid, or accrued directly or through a related member that is not treated as interest under this Part does not qualify. In determining whether a nominal debt instrument creates deductible interest allowable

under this section, the Secretary will not apply the covered debt instrument rules contained in the regulations promulgated under section 385 of the Code.

- (4) **(Effective for taxable years beginning before January 1, 2017)** Qualified interest expense. – The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the greater of (i) fifteen percent (15%) of the taxpayer's adjusted taxable income or (ii) the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to interest paid or accrued to a related member if one or more of the following applies:
- a. The State imposes an income tax on the interest income of the related member under this Article.
  - b. Another state imposes an income tax or gross receipts tax on the interest income of the related member. Interest amounts eliminated by combined or consolidated return requirements do not qualify as interest that is subject to tax under this sub-subdivision.
  - c. The related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States, and that country taxes the interest income at a rate equal to or greater than G.S. 105-130.3.
  - d. The related member is a bank.
- (4) **(Effective for taxable years beginning on or after January 1, 2017)** Qualified interest expense. – The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to interest paid or accrued to a related member if one or more of the following applies:
- a. The State imposes an income tax on the interest income of the related member under this Article.
  - b. Another state imposes an income tax or gross receipts tax on the interest income of the related member. Interest amounts eliminated by combined or consolidated return requirements do not qualify as interest that is subject to tax under this sub-subdivision.
  - c. The related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States, and that country taxes the interest income at a rate equal to or greater than G.S. 105-130.3.
  - d. The related member is a bank.
- (5) Ultimate payer. – A related member that receives or accrues interest from related members directly or through a related member and pays or accrues interest to a person who is not a related member. (2015-241, s. 32.13(f); 2016-5, ss. 1.8(a), (b); 2017-204, ss. 1.6(a), (b).)